UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LARRY K. MARTZ,	)	CASE NO. 5:09 CV 1291
	)	
Petitioner,	)	JUDGE SARA LIOI
	)	
v.	)	
	)	MEMORANDUM OF OPINION
TIM BRUNSMAN,	)	AND ORDER
	)	
Respondent.	)	

On June 5, 2008, petitioner *pro se* Larry K. Martz filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Martz seeks to challenge his conviction, pursuant to a jury verdict, for having a weapon under disability. He raises three grounds for relief in support of the petition. For the reasons stated below, the petition is denied and this action dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, a petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

It appears evident on the face of the petition that Martz has not yet sought review of his conviction in the Ohio Supreme Court. Such review may be available, *see* Ohio Sup.Ct.R.P. II,

sec. 2(A)(4)(a), and must be sought in order to exhaust state court remedies. *Rust v. Zent*, 17 F.3d 155, 160 (6th Cir. 1994).[1]

Accordingly, the petition is denied and this action is dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed. R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

Dated: September 2, 2009

HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE

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[1] Martz's state habeas action is insufficient for purposes of exhaustion, as such an action may be pursued solely to challenge jurisdiction of the trial court. Ohio Rev.Code § 2725.05.